

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TEVA PHARMACEUTICALS USA, INC., et al., :  
:  
Plaintiffs, :  
:  
v. :  
:  
SANDOZ, INC., et al., :  
:  
Defendants. :  
-----x

08 Civ. 7611  
(BSJ) (AJP)

-----x  
TEVA PHARMACEUTICALS USA, INC., et al., :  
:  
Plaintiffs, :  
:  
v. :  
:  
MYLAN PHARMACEUTICALS INC., et al., :  
:  
Defendants. :  
-----x

09 Civ. 8824  
(BSJ) (AJP)

Order

BARBARA S. JONES  
UNITED STATES DISTRICT JUDGE


On April 4, 2011, Plaintiffs Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries, Ltd., Teva Neuroscience, Inc., and Yeda Research and Development Co., Inc. moved against Defendants Sandoz, Inc., Sandoz International GmbH, Novartis AG, Momenta Pharmaceuticals, Inc., Mylan Pharmaceuticals Inc., Mylan Inc., and Natco Pharma Ltd. for a summary judgment finding of no inequitable conduct. (Dkt. 218.)

Upon review of all of the parties' legal papers and post-briefing letters regarding the implications of the Federal Circuit's en banc decision in Therasense, Inc. v. Becton, Dickinson and Company, Nos. 2008-1511, 2011 WL 2028255 (Fed.

Cir. May 25, 2011), the Court finds there are disputed issues of material fact regarding Defendants' affirmative defense of inequitable conduct. Accordingly, Plaintiffs' motion for a summary judgment finding of no inequitable conduct (Dkt. 218) is DENIED.

A bench trial regarding Defendants' inequitable conduct affirmative defense will commence on July 11, 2011 at 9:30 a.m. in Courtroom 17C of the United States District Court, 500 Pearl Street, New York, NY 10007.

SO ORDERED:

  
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**BARBARA S. JONES**  
**UNITED STATES DISTRICT JUDGE**

Dated: New York, New York  
June 17, 2011